

NTSB Order No. EA-4363

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 10th day of May, 1995

Docket SE-13714

Respondent has appealed from an order issued by Administrative Law Judge William R. Mullins<sup>1</sup> granting the Administrator's motion for summary judgment and affirming an order revoking respondent's pilot certificate pursuant to section 609(c) of the Federal Aviation Act.<sup>2</sup> The order of revocation

<sup>2</sup> Section 609(c), 49 U.S.C. app. 1429(c) [now recodified as 49 U.S.C. 44710(b)] provided, in pertinent part:

alleged violations of 14 C.F.R. 91.19(a), 61.15(a)(2) and (b)(2),<sup>3</sup> premised on respondent's felony drug conviction and his

(..continued)

(c)(1) The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person of a crime punishable by death or imprisonment for term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance), if the Administrator determines that (A) an aircraft was used in the commission of the offense or to facilitate the commission of the offense, and (B) such person served as an airman, or was on board such aircraft, in connection with the commission of the offense or the facilitation of the commission of the offense. The Administrator shall have no authority under this paragraph to review the issue of whether an airman violated a State or Federal law relating to a controlled substance.

\* \* \*

[Subparagraph (2) requires revocation in cases where an airman "knowingly engaged" in conduct described in subparagraph (1), regardless of whether there is a conviction. Subparagraph (3) describes the airman's appeal rights to the Board.]

<sup>3</sup> **§ 91.19 Carriage of narcotic drugs, marijuana, and depressant or stimulant drugs or substances.**

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

\* \* \*

**§61.15 Offenses involving alcohol or drugs.**

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs is grounds for --

\* \* \*

(2) Suspension or revocation of any certificate or rating issued under this part.

(b) The commission of an act prohibited by §91.17(a) or §91.19(a) of this chapter is grounds for --

piloting of an aircraft in connection with the underlying marijuana-smuggling offense. As discussed below, respondent's appeal is denied and the law judge's order upholding revocation is affirmed.

Respondent has filed numerous documents on appeal,<sup>4</sup> all of which challenge the revocation of his pilot certificate on essentially the same grounds. Respondent's primary argument is that this enforcement action is unsupported, or at least premature, in light of his "Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody," filed pursuant to 28 U.S.C. § 2255. In that motion, respondent raises several challenges to his criminal conviction, including -- as he also asserts in defending against this action -- that his guilty plea in the criminal case was coerced and, hence, illegal. Respondent appears to take the position that so long as this motion is pending before the U.S. District Court there is no "conviction" upon which the Administrator can base this revocation action.

(..continued)

\* \* \*

(2) Suspension or revocation of any certificate or rating issued under this part.

<sup>4</sup> In addition to his appeal brief, respondent has filed a motion to dismiss for lack of jurisdiction or for a stay pending the outcome of his motion to vacate the sentence in his criminal case; two motions for summary judgment, including a "supplement" to his first motion; and an "amended" appeal brief (which was filed after the due date for respondent's brief, and includes additional argument). The Administrator has filed motions, opposed by respondent, to strike some of these documents as unauthorized. Because our rules do not authorize motions for summary judgment at the appellate stage, or additional appeal briefs such as respondent's so-called "amended" brief, we have not considered those documents in this appeal.

Respondent's challenge represents a collateral attack on his criminal conviction, which we have no authority to address.<sup>5</sup> Moreover, neither section 609(c) nor 14 C.F.R. 61.15(a)(2) requires that a conviction be completely "final" (i.e., that all avenues of challenge be exhausted) before the Administrator may take certificate action under those provisions.<sup>6</sup> Accordingly, respondent's pending motion to vacate, set aside or correct his sentence does not bar this enforcement action.

Respondent also challenges the law judge's grant of summary judgment without holding a hearing. No purpose would have been served by a hearing, however, since respondent does not dispute that he was convicted of a drug-related felony which involved his piloting of an aircraft which contained 160 pounds of marijuana.

Since section 609(c) requires revocation under these circumstances, there were no material issues in dispute and summary judgment was appropriate.<sup>7</sup> Respondent's assertion that he was unaware of the existence of the marijuana in the aircraft does not affect the Administrator's statutory obligation to revoke respondent's pilot certificate. In any event,

---

<sup>5</sup> In specifically prohibiting administrative review of "the issue of whether an airman violated a State or Federal law relating to a controlled substance" (49 U.S.C. app. 1429(c) [now recodified as 49 U.S.C. 44710(b)], Congress clearly intended to preclude such collateral attacks on the validity of drug convictions.

<sup>6</sup> Cf. Administrator v. Hernandez, NTSB Order No. EA-3164 (1990).

<sup>7</sup> See Administrator v. Olsen and Nelson, NTSB Order No. EA-3949 at 6 (1993).

respondent's claimed ignorance is inconsistent with his guilty plea to criminal counts of "knowingly and intentionally" possessing, and conspiring to possess, marijuana with intent to distribute, the validity of which we are not empowered to re-examine.

Respondent also argues that this action is barred by our stale complaint rule (49 C.F.R. 821.33), and by the Double Jeopardy Clause of the Constitution. The stale complaint rule does not apply, however, to cases where, as in this case, the allegations in the complaint present a legitimate issue of lack of qualification.<sup>8</sup> Regarding the Double Jeopardy Clause, we have held -- and courts have agreed -- that that clause, which prohibits punishing twice criminally for the same offense, is inapplicable to cases such as this since revocation is a remedial (not punitive) sanction, and these are essentially civil (not criminal) proceedings.<sup>9</sup>

---

<sup>8</sup> Aside from the fact that mandatory revocation under section 609(c) is implicitly based on a Congressional determination that such airmen lack the requisite qualifications, we have often held that drug offenses involving the use of an aircraft demonstrate a lack of qualifications to hold a pilot certificate. See, e.g., Administrator v. Gilliland, NTSB Order No. EA-4149 (1994); Administrator v. Renner, NTSB Order No. EA-3927 (1993); Administrator v. Hagan, NTSB Order No. EA-3985 (1993); Administrator v. Derrow, NTSB Order No. EA-3590 at 5 n. 5 (1992).

<sup>9</sup> See Administrator v. Franklin, 3 NTSB 985, 986 (1978), aff'd., Franklin v. FAA, No. 78-3336 (5th Cir. June 12, 1979); Administrator v. Davids, NTSB Order No. EA-3740 at 3 (1992), aff'd., Davids v. FAA, No. 93-70009 slip op. at 3 (9th Cir. September 13, 1993); Administrator v. Byrom, NTSB Order No. EA-3866 at 4 (1993).

In sum, respondent has established no error in the law judge's grant of summary judgment in this case.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. Respondent's motion to dismiss for lack of jurisdiction or for stay is denied;
3. The law judge's order granting summary judgment and upholding revocation is affirmed; and
4. The revocation of respondent's pilot certificate shall commence 30 days after the service of this opinion and order.<sup>10</sup>

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above opinion and order.

---

<sup>10</sup> For the purpose of this opinion and order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).